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## VIA FEDERAL EXPRESS

Marlene H. Dortch, Secretary  
 Federal Communications Commission  
 9300 East Hampton Drive  
 Capitol Heights, MD 20743

Re: WT Docket No. 00-239

Dear Ms. Dortch:

Enclosed please find **an** original and four copies of the Reply Comments of The Nebraska Rural Independent Companies for filing in the above-referenced docket. In addition, I have enclosed a further copy of these comments, together with a self-addressed, stamped envelope. Please return a file-stamped copy of such comments to me in the enclosed envelope.

Copies of the comments are being provided to the below referenced persons in diskette form. Please do not hesitate to contact the undersigned in the event any questions arise in conjunction with this filing.

Very truly yours,



PMS/dh  
 Enclosures

cc: Mr. Milton Price (via Federal Express, 1 paper copy and 1 diskette copy)  
 Commercial Wireless Division  
 Wireless Telecommunications Bureau  
 Federal Communications Commission  
 9300 East Hampton Drive  
 Capitol Heights, MD 20743

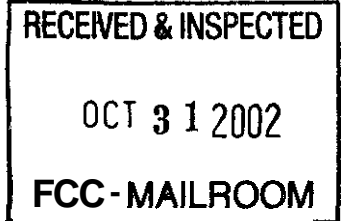
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Marlene H. Dortch, Secretary  
October 30, 2002  
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Qualex International (via Federal Express, 1 paper copy and 1 diskette copy)  
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Ms. Sue Vanicek (w/o encl.)

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**



In the Matter of: )  
)  
Petition of the State Independent Alliance and ) WT Docket No. 00-239  
the Independent Telecommunications Group for )  
a Declaratory Ruling That the Basic Universal )  
Service Offering Provided by Western Wireless )  
in Kansas is Subject to Regulation as Local )  
Exchange Service. )

**REPLY COMMENTS OF  
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

**Introduction**

The Nebraska Rural Independent Companies' (the "Nebraska Companies") respectfully submit these reply comments in response to the comments filed pursuant to a Public Notice whereby the Federal Communications Commission (the "Commission") invited comment on a Petition for Reconsideration and Clarification (the "Petition") submitted by the State Independent Alliance and the Independent Telecommunications Group (the "Kansas Independents").

**I. The Kansas Independents' Petition for Reconsideration and Clarification Includes a Legitimate Attempt to Have the Commission Clarify and Re-Examine its Decision Relative to the Right of State Commissions to Condition the Receipt of State Universal Funds Upon the Provision of Equal Access.**

Several industry organizations and other affected parties filed comments supporting the Kansas Independents' desire for clarification of the Commission's order. NTCA, an organization representing rural telecommunications providers, states that: "[t]he Commission

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<sup>1</sup> Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

should be encouraging states to develop universal service support plans. Congress determined that universal service should be preserved and advanced. The states are in the best position to know what is necessary and needed in their own communities.... Therefore, the Commission should clarify that states are permitted to establish programs that condition the receipt of state support on the provision of services such as equal access.”<sup>2</sup>

In addition, the Nebraska Public Service Commission (“NPSC”) supported the Kansas Independents’ request for clarification because the NPSC believes that the Commission’s order implied “...that the classification of a service as Commercial Mobile Radio Service (“CMRS”) has a bearing on whether or not a state has the authority to establish requirements for a state universal service fund.”<sup>3</sup> The Nebraska Companies concur with the NPSC’s assertion that “[c]lassification of a service has no bearing on whether a state has the authority to establish requirements for a state universal service fund” and support the right of the Kansas Corporation Commission to establish conditions for the receipt of state universal service funding.

**11. Contrary to the Comments of AT&T Wireless, Western Wireless and the Cellular Telecommunications and Internet Association (“CTIA”), Federal Law Does Not Preclude States From Establishing Conditions for the Receipt of State Universal Service Funds.**

AT&T Wireless, Western Wireless and CTIA are distorting 47 U.S.C. §§ 332(c)(3) and 332(c)(8) when they claim that federal law precludes states from establishing conditions for the receipt of state universal service funds. Section 332(c)(3) states in part: “...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...” There is widespread agreement that 332(c) was intended to prohibit state regulations that would prevent CMRS entry into state markets. By establishing

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<sup>2</sup> *Comments of the National Telecommunications Cooperative Association*, WT Docket No. 00-239, October 16, 2002, at 5.

<sup>3</sup> *Comments of the Nebraska Public Service Commission (NPSC)*, WT Docket No. 00-239, October 16, 2002, at 2

<sup>4</sup> *Ibid.*

equal access as a condition for receipt of state universal service funding, however, state commissions are in no way impeding the entry of or regulating the rates charged by CMRS providers. Instead, by so doing, consistent with Section 332(c)(3), commissions are imposing conditions “on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.” NTCA points out, “... participation in a state universal service fund is purely voluntary. A carrier makes the choice to participate in the program and must agree to abide by its provisions.”<sup>5</sup> OPASTCO correctly observes, “... conditioning the receipt of support from a voluntary universal service program on the provision of equal access or any other service, is in no way equivalent to a general requirement imposed upon a CMRS carrier.”<sup>6</sup>

The Kansas Independents are not advocating the establishment of equal access as a condition for entering the market, but rather as a condition for receiving state universal service funds. CMRS providers are not required to provide equal access. Only if CMRS providers want to be eligible to collect state universal service funding in a state where equal access is a condition for the receipt of such funding are CMRS providers required to offer equal access.

The NPSC has mandated the provision of equal access as a condition to receipt of Nebraska universal service funds. In its comments in this docket, the NPSC points to the court decision in *WWC Holding Co. Inc. v. Public Service Commission of Utah*, 44 P.3d 714 (Utah 2002) as support for its decision, *i.e.*, “... the NPSC inclusion of the provision of equal access as a condition to receive state support is just that – a condition imposed on the receipt of state funds – and not a requirement imposed on CMRS carriers generally.”<sup>7</sup> In its comments, OPASTCO also points to the Utah decision, stating that “[s]imilarly, the inclusion of equal access as a

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<sup>5</sup> *Comments of NTCA* at 5.

<sup>6</sup> *Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)*, WT Docket No. 00-239, October 16, 2002, at 6.

<sup>7</sup> *Comments of the NPSC* at 5.

supported service does not equate to a general equal access obligation imposed upon all wireless carriers in violation of Section 332(c)(8) of the Act.”<sup>8</sup>

AT&T Wireless, Western Wireless and CTIA are also misconstruing 47 U.S.C. § 254(f). ETC status has already been granted to wireless *carriers* in Kansas and other states in accordance with federal guidelines. No wireless carrier has been denied ETC status or the receipt of federal funds on the basis that it did not meet state universal service fund conditions.

Section 254(f) declares that: “[a] State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.” Establishing conditions such as equal access is consistent with federal universal service goals regarding the preservation and advancement of universal service within the state. The NPSC states in its comments that it “has found that conditioning the receipt of [Nebraska Universal Service Fund (“NUSF”)] support on the provision of equal access to interexchange carriers advances universal service within Nebraska, and does not rely on or burden federal universal service support mechanisms.”<sup>9</sup> The NPSC goes on to say that while “[e]qual access to interexchange services is not currently included in the list of federally supported universal services,... [it] believes that this is not a limiting factor for development of support services that the NPSC may establish for access to the NUSF.”<sup>10</sup> The NPSC cites the ruling in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999) as support for its position. As OPASTCO also accurately points out, “...Section 254(f) of the Telecommunications Act of 1996 specifically grants states the authority to ‘provide for

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<sup>8</sup> *Comments of OPASTCO* at 7.

<sup>9</sup> *Comments of the NPSC* at 3.

<sup>10</sup> *Ibid.*

additional definitions and standards to preserve and advance universal service within that state.”<sup>11</sup>

Furthermore, the claim that an equal access requirement would burden the federal universal service fund is illogical. The monies, after all, are provided by the state fund and represent receipts from surcharges on intrastate telecommunications services, and are not monies provided by the federal universal service fund. Any cost recovery mechanisms associated with the conditioning of state support upon the provision of equal access are limited to the state jurisdiction, as noted by the NPSC in its comments.”

**III. The Kansas Corporation Commission is Within its Right to Decide That An Equal Access Obligation Imposed Upon All Carriers Seeking State Universal Service Funding Supports the Public Interest.**

Conditions such as an equal access obligation support the public interest and are not imposed on CMRS providers in a discriminatory manner. As the Nebraska Companies asserted in their comments, state commissions have an obligation to preserve and advance universal service within their states in a manner that best meets the needs of their citizens. Further, state commissions have the authority to set forth conditions for receipt of universal service support for all eligible telecommunications carriers – both wireline and wireless. OPASTCO appropriately calls attention to the Commission’s own universal service principle of competitive and technological neutrality which “... suggests that a state should have the freedom to condition the receipt of intrastate support funds to all carriers on the provision of whatever set of supported services that the state legislature and public utility commission deem to be in the public interest. This includes equal access to interexchange service.”<sup>13</sup> Fred Williamson and Associates, Inc., similarly argues that “[t]he purpose of requiring an ETC to accept equal access obligations is to

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<sup>11</sup> *Comments of OPASTCO at 6.*

<sup>12</sup> *Comments of the NPSC at 4.*

<sup>13</sup> *Comments of OPASTCO at 7.*

achieve the public interest goal of ensuring all citizens receive the competitive benefits of reasonable and affordable toll telephone service of the customer's choice, irrespective of the ETC that the customer chooses.”<sup>14</sup> Further, in its comments, the NPSC affirmed its belief that “conditioning NUSF support upon providing equal access is within its statutory responsibility to safeguard the rights of consumers within Nebraska.”” Finally, NTCA aptly maintains that “...there is nothing that withholds from the state the authority to condition the receipt of universal service support on the provision of services it deems necessary for the good of its citizens.”<sup>16</sup>

## **Conclusion**

The Nebraska Companies support the Kansas Independents' efforts to seek clarification of the Kansas Corporation Commission's right to condition the receipt of state universal service funds upon the provision of equal access. The Nebraska Companies agree with those commenters who assert that a state commission's right to establish conditions for the receipt of state universal service funds does not violate federal law and, in fact, is supported by federal law. Lastly, the Nebraska Companies agree with those commenters who endorse the Kansas Corporation Commission's right and obligation to protect consumers and promote the public interest by conditioning the receipt of state funding on the provision of equal access.

Dated: October 30,2002.

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<sup>14</sup> *Comments Of: Fred Williamson and Associates, Inc. (“FW&A”),* WT Docket No. 00-239, October 16,2002, at 8.

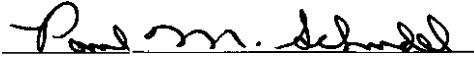
<sup>15</sup> *Comments of the NPSC* at 3.

<sup>16</sup> *Comments of NTCA* at 6.



Respectfully submitted,

Arlington Telephone Company  
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Cambridge Telephone Company,  
Clarks Telecommunications Co.,  
Consolidated Telephone Company,  
Consolidated Telco Inc.,  
Eastern Nebraska Telephone Company,  
Great Plains Communications, Inc.,  
Hartington Telecommunications Co., Inc.,  
Hershey Cooperative Telephone Company, Inc.,  
Hooper Telephone Company,  
K&M Telephone Company, Inc.,  
Nebcom, Inc.,  
Nebraska Central Telephone Company,  
Northeast Nebraska Telephone Company,  
Pierce Telephone Co.,  
Rock County Telephone Company,  
Stanton Telephone Co., Inc., and  
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